

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

vs.

Case No. 2003-1161-FH

DONALD HOWARD GOLDEN,

Defendant.

OPINION AND ORDER

Defendant moves to correct the presentence investigation report (PSIR) pursuant to MCR 6.429(C).

Defendant pled guilty to an added count III, attempted larceny from a person, and habitual third on January 12, 2004, in exchange for the dismissal of a count for unarmed robbery (count I). A preliminary examination had been held in the 41-A District Court, the Hon. Douglas P. Shepherd presiding, on September 29, 2003. The People presented the complaining witness, a witness on the scene, and the arresting officer. Defendant called no witnesses. The charge stemmed from an incident occurring in a Kroger after 5:00 p.m. The complaining witness had an envelope full of money in her purse. She testified that she looked away from her cart, containing the purse, turned back, and saw defendant with her envelope. After demanding the return of her money, the complainant testified, she grabbed defendant's jacket, injuring her fingers. The complainant testified she yelled for help, and defendant ran out of the store. A second witness testified that he happened to look in the store mirror and saw defendant hit the complainant on the head with an object before she yelled for help. A police officer testified that he apprehended



defendant after he ran out of the store with the money. The trial court dismissed count II for conspiracy and bound over on unarmed robbery, finding the assault part of a single larcenous transaction. Again, defendant ultimately pled to larceny. Defendant was sentenced on February 19, 2004, to 28 months to 10 years in prison, to run consecutive to a parole sentence, with 334 days credit on the parole sentence.

Defendant now moves to correct the presentence investigation report (PSIR). Specifically, defendant objects to the agent's description of the offense, in which the agent alleges that as assault (a punch to the back of the head) occurred during the commission of the act. In support of this, defendant asserts that the complainant did not testify to being punched. Further, defendant asserts a second eyewitness, who stated he saw defendant hit the complainant with an unknown object, also testified that he was "one aisle away," "around a corner," and could not possibly have seen him. Therefore, defendant asserts, there is no factual basis for the agent's description.

The trial court's response to a claim of inaccuracies in the PSIR is reviewed for an abuse of discretion. *People v Spanke*, 254 Mich App 642, 648; 658 NW2d 504 (2003). The Court of Appeals has recognized the broad scope of the PSIR:

The presentence investigation report is an information-gathering tool for use by the sentencing court. Therefore, its scope is necessarily broad. A judge preparing to sentence a defendant may consider comments made by the defendant to the probation officer during the presentence interview in addition to evidence adduced at trial, public records, hearsay relevant to the defendant's life and character, and other criminal conduct for which the defendant has not been charged or convicted. *Morales v Parole Bd*, 260 Mich App 29, 45- 46; 676 NW2d 221 (2003).

MCR 6.425(A) provides that the presentence investigation report must include "a complete description of the offense and the circumstances surrounding it, ... information concerning the financial, social, psychological, or physical harm suffered by any victim of the offense, ... any

statement the defendant wishes to make ... [and] any other information that may aid the court in sentencing.”

In this case, defendant objects to the agent’s description of the offense to the extent that it reads that, after defendant grabbed the envelope, and the victim grabbed defendant, “defendant then punched prime victim in the back of the head, causing her to let go.” Defendant insists he did not physically assault the complainant. At the preliminary examination, the complainant testified that after she saw defendant with the envelope, she demanded her money, and defendant started to run. The complainant then grabbed him with her left hand. (Tr 7) She testified that she started “fighting” with him. (Tr 7) The complainant testified that she started screaming, “Help, help,” and “I don’t know what he did, just he run from my hand and I start running after him, all aisles . . . but nobody help me. . . .” (Tr 8) When asked whether defendant hit her, the complainant responded, “That time, no, I don’t, I don’t remember exactly what [sic] he hit me, he did something, I don’t know, but I was back to catch, to run, to not run from me.” (Tr 9)

Another witness, a man who had been shopping during this incident, testified that “[he] just happened to look in the mirror” and saw defendant “hit the lady with some object, I don’t know what it was, but then I heard her say, ‘Help,’ and I went around the corner and I saw him running, so I couldn’t fight him so I tripped him and he fell onto the display. . . .” (Tr 18-19) The witness reiterated that defendant hit the woman with an object, but he did not know what the object was. (Tr 19) The witness stated defendant hit her on the head. (Tr 20)

Thus, while the complainant’s testimony is somewhat confusing, in that she stated that defendant had not hit her “that time,” and she did not remember exactly “what he hit me, he did something,” there is testimony by the second eyewitness that defendant hit the complainant in the head, then the complainant yelled for help, and defendant ran. While defendant contends the

second eyewitness could not have physically seen him, being on the other side of the aisle, the witness explained that he was viewing this from the store mirror. Further, his testimony is not clearly and expressly contradicted by the complainant's testimony, as set forth above. Moreover, at sentencing, defense counsel stated he had reviewed the PSIR with defendant and found no need for corrections. (Tr 3) In any event, the Court is persuaded that the testimony from the eyewitness at the preliminary examination sets forth a basis for the agent's description of the offense, and is properly included in the PSIR.

For the foregoing reasons, defendant's motion to correct the presentence investigation report is DENIED. In compliance with MCR 2.602(A)(3), the Court states this case has been resolved previously and remains closed.

IT IS SO ORDERED.

Date:

JUN - 9 2006

Diane M. Druzinski, Circuit Court Judge

DMD/aac

cc: John Paul Hunt, Asst. Prosecuting Attorney
Defendant, In Pro Per #184824
1960 Marquette Branch Prison
Marquette, MI 49855

DIANE M. DRUZINSKI
CIRCUIT JUDGE

JUN - 9 2006

A TRUE COPY
CARMELLA BARAUGH, COUNTY CLERK
BY: *[Signature]* Court Clerk